

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 62

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THE PEOPLE OF THE STATE OF NEW YORK :

- against - : Indictment No. 2840/06  
Jimmy Innocent, : Decision and Order

Defendant. :  
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RENEE A. WHITE, J.

Defendant Jimmy Innocent has been indicted with five others, charged with Criminal Possession of a Weapon in the Second Degree (two counts), Criminal Possession of a Weapon in the Third Degree (two counts), Criminal Possession of Marihuana in the Second Degree, Criminal Possession of a Weapon in the Fourth Degree and Possession of Ammunition (seven counts).

The defendant moves for inspection of the Grand Jury minutes and dismissal of the indictment for lack of legally sufficient evidence. The Court has conducted an in camera inspection of the minutes.

Defendant and others were arrested inside an apartment containing weapons, ammunition and marihuana. The prosecutor did not ask the Grand Jury to indict defendant Innocent predicated upon any legal presumption pertaining to weapons or drugs. Rather, the prosecutor instructed the Grand Jury that the charges against defendant Innocent were predicated solely on the theory that defendant Innocent constructively possessed those items.

The evidence adduced before the Grand Jury showed that defendant Innocent did not reside in the subject apartment. The

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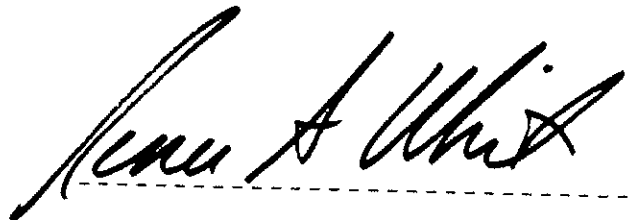
prosecutor requested an indictment against defendant Innocent predicated upon evidence that defendant Innocent, as well as others, "was in close proximity to the desk where the switchblade knife, the bullets and from where subsequently a loaded firearm was recovered". Under these circumstances, there was an absence of legally sufficient evidence establishing that defendant Innocent constructively possessed any of the items of contraband recovered from the apartment. Accordingly, defendant's motion to dismiss the indictment as against him is granted; and the remainder of the action as against the other defendants is severed and continued.

In light of the dismissal of the indictment as against defendant Innocent, the other requests for relief contained in his omnibus motion are denied as moot.

This opinion constitutes the decision and order of the Court.

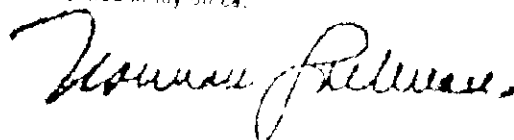
Dated: September 21, 2006

New York, New York



Renee A. White, J.

DATE OCT 16 2007  
I hereby certify that the foregoing  
paper is a true copy of the original  
thereof, filed in my office.



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County Clerk, and Clerk of the  
Supreme Court New York County  
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